



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

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**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory Supervisor  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: April 26, 2010**

**SUBJECT: Exempt Final Regulation to Reduce the Pharmacy Reimbursement**

I have reviewed the attached exempt final regulation that will decrease the maximum reimbursement for pharmaceutical products to the Average Wholesale Price minus 13.1%. If there is an extension through June 30, 2011 of increased Federal Medical Assistance Percentage under the American Recovery and Reinvestment Act (P.L. 111-5), this reduction will not be effective. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to promulgate the regulation and if the regulation comports with state and federal law.

Item 297 (SSS) of the 2010 Appropriations Act directs DMAS to take this action. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority.

Based on the foregoing, it is my view that the amendment of these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A).

Brian McCormick  
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If you have any questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment